BRIEF.

In Support of the Foregoing Petition for a Writ of Certiorari.

The index precedes the petition for certiorari.

I.

The Final Orders Below.

The appellate court handed down no opinion. Its final order appears at R. 57. No opinion was rendered by the Judge of the District Court. The two orders of the District Court, which were sustained by the Appellate Court, appear at R. 49.

II.

Grounds on Which the Jurisdiction of This Court is Invoked

The statutory basis of the jurisdiction of this court has been stated at page 5 of the preceding petition for certiorari, and the grounds relied upon for invoking the jurisdiction of this court have been set forth at pages 6 to 10 of the preceding petition. To recapitulate them, they are: that the fundamental right of a litigant to file a plead-

ing or motion has been denied; that an important question of the interpretation and administration of a federal statute is involved, namely Section 75 (s) (3) which prescribes the procedure whereby a farmer debtor may redeem his farm from liens against it; that the decision of the appellate court below is in direct conflict with said statute; and it is in conflict with the following decisions:

Peterson v. *John Hancock*, 1940, 116 Fed. (2d) 148;
John Hancock v. *Bartels*, 308 U. S. 180;
Gray v. *Union Joint Stock Land Bank*, 308 U. S. 523;
Morrison v. *Federal Land Bank*, 308 U. S. 524;
Borchard v. *California*, 310 U. S. 311;
Wright v. *Logan*, 315 U. S. 139;
Wragg v. *Federal Land Bank*, 317 U. S. 325;
Wright v. *Union Central*, 311 U. S. 273.

III.

STATEMENT OF THE CASE.

The District Court Order to Conciliation Commissioner to Conduct Valuation Hearing.

Following the decision of this court in the second case of *Wright* v. *Union Central*, 1940, 311 U. S. 273, holding that a farmer debtor's farm may not be sold under Section 75 (s) (3) until he has had an opportunity to redeem it at its appraised value, the bankruptcy court issued its order of March 21, 1941, directing the conciliation commissioner to have a hearing at which "the secured creditor be afforded an opportunity to present evidence as to the present fair value of such farm and that the conciliation commissioner

determine the correct appraised value and fix a reasonable time within which the debtor shall redeem the farm from the mortgage lien." R. 8 to 9.

Hearing Before the Conciliation Commissioner.

A hearing was held by the conciliation commissioner at which evidence was submitted by the secured creditor and by the farmer debtor. A narrative form of the evidence appears at R. 10 to 28.

Conciliation Commissioner's Report After Hearing.

The conciliation commissioner reported that he conducted a hearing and "after hearing the testimony given by the several witnesses, and studying the briefs furnished by the defendant and the plaintiff, and upon a personal investigation by the conciliation commissioner of the value of said farm I hereby fix the value of said farm at $150 per acre." ($25,200). R. 9.

The value so set by the conciliation commissioner was reduced to $20,000 by the district judge who expressly disregarded the former valuation of $5,800 in the same proceeding stating that such value "was made for taxation purposes." This disregard of the $5,800 valuation was in conflict with the evidence which the record clearly showed to be prior valuation of the farm in question by the same conciliation commissioner in the same proceeding. In his opinion the district judge expressly found there had been little change in the value of the farm, his words being, "although it has improved somewhat within the last two or three years." Stating there were no "present or prospective developments" to justify a fair market value outside of its bare agricultural value. R. 35 to 37.

The court of appeals on appeal held that the district court had a "discretion" to set the valuation and affirmed it.

This Court expressly held on certiorari in *Carter* v. *Kubler*, 320 U. S. 243, that the $5,800 valuation was an appraisal of the same farm in the same proceeding by the same conciliation commissioner, such holding being directly contradictory to the finding of the district court that the $5,800 was for "taxation purposes." *Carter* v. *Kubler*, 320 U. S. 243, second paragraph. This Court also held that the conciliation commissioner's "personal investigation was improper. When the case came back to the district court the petitioner sought to have the value of his farm fixed for his redemption by having the district court consider the $5,800 valuation which the judge had refused to consider on the ground that it was merely for "taxation purposes" and not concerned with the farmer debtor proceeding.

He prepared his petition for rehearing and presented it to the Clerk who refused to file it, and his request to the Court that it be filed was denied. This is the first order appealed from. R. 49 First Order.

The district court then ordered the farmer debtor to redeem at the former erroneously based $20,000 valuation or have his farm sold. This is the Second Order appealed from. R. 49, Second Order.

On appeal both orders were sustained without opinion. R. 57. The first order denying the right to file the petition

for rehearing was ignored. The second order was sustained on the stated ground that "there must be an end to litigation and a recognition of final judgment." R. 57. Thus ignoring the court's refusal to permit the petitioner to file his motion, and ignoring the refusal of the district court to consider the "evidence submitted," of the $5,800 official valuation by the court itself.

IV.

SPECIFICATION OF ERRORS.

1.

The petitioner was denied due process of law when the Clerk refused and the court of appeals sustained the Clerk in refusing to file his petition for rehearing.

2.

The petitioner was denied due process of law when the judge of the district court denied and the court of appeals sustained the district court in denying, his request to file his petition for rehearing.

3.

The district court violated Section 9 of the Judicial Code 28 U. S. C. 13, which provides that the district court shall be deemed always open, as courts of equity, for the purpose of filing our pleading, and making motions, and the court of appeals erred in sustaining such violation by the district court.

4.

The district court violated Rule 77 (a) of the Rules of Civil Procedure for the District Courts of the United States which provides that district courts shall be deemed always open for the purpose of filing any pleading or other paper, and the court of appeals erred in sustaining the district court in such violation.

5.

The court of appeals erred in sanctioning the departure by the district court from the accepted and usual course of judicial proceedings in denying to the petitioner his right to file his motion in the office of the clerk of the district court.

6.

The decision of the court of appeals is contrary to the generally recognized course of conduct of judicial offices.

7.

The court of appeals by "concluding that at some point there must be an end to litigation and a recognition of final adjudication" (R. 57), violated the fundamental right of a litigant to have his claim of right judicially determined. Said appellate court refused to consider in any way the claim of the petitioner.

8.

The appellate court and the district court erred in disregarding the holding of this court that $5,800 was the original valuation of the farm which overruled the finding of the district court that such valuation had no relation to the case thus disregarding the evidence submitted. The result is that the order requiring the petitioner to redeem

his farm, or in lieu thereof to have his farm sold, is a direct violation of the statutory duty of the court to fix a value for redemption in accordance with the evidence submitted. Order R. 49, bottom of page. Section 75 (s) (3).

9.

The order of the district court requiring the petitioner to redeem his farm is in violation of Section 75 (s) (3) requiring the court first to fix a value of redemption in accordance with the evidence submitted.

10.

The appellate court erred in expressly adhering to its former holding in *Carter* v. *Kubler*, 131 Fed. 222, that the bankruptcy court had a "judicial discretion" to fix the sum at which a farmer debtor shall redeem his farm under Section 75 (s) (3), and such holding of the appellate court below is in conflict with the decision of the Eighth Circuit Court of Appeals in *Peterson* v *John Hancock*, 1940, 116 Fed. (2d) 148, in holding that "The Statute, as construed by the Supreme Court in *Bartels* case, is explicit and mandatory, and the District Court had no discretion to act contrary to its terms," and holding that "judicial decision and not judicial discretion" is what is called for.

11.

The decision of the appellate court in sustaining the order of the district court requiring redemption, or in lieu thereof, requiring sale of the petitioner's farm, without any valuation being fixed by the court in accordance with the evidence submitted, is in conflict with the decision of this court in *John Hancock* v. *Bartels*, 308 U. S. 180; *Gray* v. *Union Joint Stock Land Bank*, 308 U. S. 523; *Morrison* v. *Federal Land Bank*, 308 U. S. 524; *Borchard* v. *California*,

310 U. S. 311; *Wright* v. *Logan*, 315 U. S. 139; and *Wragg* v. *Federal Land Bank*, 317 U. S. 325, holding that Section 75 of the Bankruptcy Act provides an orderly procedure which this court called a "Mandate of the Statute." The provision of Section 75 (s) (3) that redemption shall be made at a valuation fixed in "accordance with the evidence submitted" has been utterly disregarded by the district court, which the appellate court has sustained.

12.

The decision of the appellate court in sustaining the district court in its order for redemption, or in lieu thereof, ordering a sale of the petitioner's farm without first fixing the valuation for redemption in accordance with Section 75 (s) (3) is in conflict with the decision of this court in *Wright* v. *Union Central*, 311 U. S. 273, that the statute must be "liberally construed to give the debtor the full measure of the relief afforded by Congress, lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act." The decision and order below disregard the express provision of Section 75 (s) (3) that the valuation for redemption must be fixed "in accordance with the evidence submitted."

V.

SUMMARY OF THE ARGUMENT.

1.

The refusal of the clerk to file the "Petition for Rehearing" was an unlawful and arbitrary denial of a fundamental right—it deprived him of due process of law.

2.

The only lawful valuation for redemption of the appellant's farm was $5,800. There has never been any other valuation in accordance with the statutory prescription that it must be "**IN ACCORDANCE WITH THE EVIDENCE SUBMITTED.**"

3.

The proceedings in the district court below cut right across the course of the uniform course of the decisions of this court, that in administering Section 75 the orderly procedure of the statute is a mandate to be followed.

1.

The refusal of the clerk to file the "Petition for Rehearing" was an unlawful and arbitary denial of a fundamental right—it deprived him of due process of law.

The refusal to file, and denial of the right to file, his "Petition for Rehearing" was an arbitrary denial of the

most sacred legal right of every person who is a party to a judicial proceeding.

It is a denial of justice to say that,

> "at some point there must be an end to litigation and a recognition of final adjudication." (R. 59).

short of full and complete consideration of all of the issues presented.

Emphatically, if jurisprudence is to serve justice, there must be no end to litigation by a court, which itself has failed to consider the "evidence submitted," and there can be no "final adjudication" while there is outstanding an utter disregard of "evidence submitted" and of the plain mandatory requirement of the statute that:

> "the court **shall** . . . fix the value of the property **in accordance with the evidence submitted and the debtor shall then pay the value so arrived at into court.**" Section 75 (s) (3).

A court of justice cannot refuse to a litigant the right to file a pleading or motion in his case.

A bankruptcy court as a court of equity is always open, 28 U. S. C., Section 13.

The district courts shall be deemed always open for the purpose of filing any pleading or other proper paper. Rules of Civil Procedure, Rule 77 (a).

A court is not "open" if a document presented for filing will not be received.

The clerk "is required to" . . . "file pleadings." . . . "That such services are connected with a clerk's office is beyond question. They constitute his principal and most important duties." *U. S.* v. *Oliphant*, 230 Fed. 1. "It is the of-

ficial duty of the clerk of a court to file all the papers in a cause presented by the parties" . . . 11 Corpus Juris "Clerk of Courts," Section 73. "Mandamus will lie to compel the clerk" . . . "to file papers properly delivered to him." . . . 38 Corpus Juris, "Mandamus," Section 109.

The deprival of a litigant's right to his day in court is the "unpardonable sin" of Anglo-Saxon jurisprudence. It violates the guarantee wrested from the king at Runnymede seven centuries ago that justice shall be free and not dispensed as a favor nor sold. It ignores the due process twice secured to all persons, first in the Bill of Rights by the Fifth Amendment and again in the Fourteenth Amendment.

Is the clerk to be permitted to extinguish an issue by refusing to file a paper presented by a litigant?

May the judge of a court prejudge a paper presented for filing by a litigant and refuse his right to file it in the court?

The implications involved in following such suggestions to their logical conclusions and ramifications are too ghastly to be contemplated by the light of the long history of American Jurisprudence and its sources running back through many centuries of struggle for a government of laws and not of men.

However honest and righteous a court officer or minister may be in a specific case, the refusal of the elementary right of a litigant to file his motion, lays the ground by precedent for the breakdown of the foundation of justice in the courts.

2.

The only lawful valuation for redemption of the appellant's farm was $5,800. There has never been any other valuation in accordance with the statutory prescription that it must be "IN ACCORDANCE WITH THE EVIDENCE SUBMITTED."

This next subject is an equally serious deprivation of the appellant's rights. It blows off the cylinder head of the statute and leaves it impotent to accomplish the sole purpose of Section 75—the right to redeem his farm at its value fixed "in accordance with the evidence submitted." It is judicial process itself that is on trial.

The district court has no **POWER** to fix the value of a farmer debtor's farm for redemption except as laid down in Section 75 (s) (3). It is there required that the court **shall** "fix the value of the property in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court" . . . "and thereupon the court **shall,** by an order, turn over full possession and title of said property, free and clear of all encumbrances to the debtor."

The "evidence submitted" included the $5,800 valuation of the same farm by the same court in the same proceeding. But the court arbitrarily threw out that part of the evidence and refused to consider it saying it was "made for taxation purposes" (Memorandum of the court, R. 39, end of first paragraph). Even in a case where the conciliation commissioner refused to consider the assessed valuation for taxation by the state in fixing the valuation for redemption in a farmer debtor proceeding, the judge held that the conciliation commissioner does not have the right to refuse to consider it, and vacated the conciliation commissioner's

findings and order. *In re Breuer,* Farmer Debtor, District Court, North Dakota, 1943, 52 Fed. Supp. 982.

Because confusing and specious arguments have dogged this case and chased out any consideration of the real issue they should be driven away. Therefore it must be said that it is not "a reconsideration of the evidence," or a mere "rehearing of the evidence" that is involved. What is sought is a consideration of evidence that was entirely disregarded—thrown out of all consideration. This Court in *Carter* v. *Kubler*, 320 U. S. 243, held the district judge was in error in finding that the $5,800 valuation was for "taxation purposes" and alien to the case. This court held that the $5,800 valuation was the previous valuation of the farm, and by statute it was the valuation for redemption if no other valuation had been ordered. See the first sentence of Section 75 (s) (3). The judge of the District Court has never weighed this material evidence. Until it is weighed there is no valuation in "accordance with the evidence submitted."

Putting it another way, this cause is not presented on the theory that the evidence weighed by the District Court does not support the conclusion reached by that court. (Although when examined, it is perfectly clear that it does not; R. 9 to 28). It is presented on the basis that the district court utterly disregarded evidence essential to a legal conclusion to be reached "in accordance with the evidence submitted."

It may be thought that the district judge's $20,000 conclusion would have been the same if he had considered and weighed the $5,800 valuation because of a rise in values in the interval since it was originally fixed. It could not have been the same because there was little change in value. Let use examine his own words on that subject:

He said:

> "**The buildings and fences are probably of little value for appraisal purposes and the timber land probably the same.**" "A review of the testimony gives the impression that **there is not an active market for farm land in this location** at least, although it has improved somewhat within the last two or three years. While it may be possible that the land has a potential value for development into the country place class, if and when conditions favorable for such development return, yet **it is to be seriously doubted that such a market value ever will exist and it must be regarded as merely speculative**, as matters stand. **There are no present or prospective developments to justify a fair market value upon such basis.** Generally, the rule is that the fair market value is the price which a willing seller could reasonably expect to obtain from a desirous buyer, neither being under necessity" (Memorandum opinion, R. 30 and 31).

The original valuation set by the court itself and accepted without objection or exception by all parties was utterly disregarded. Had the judge of the district court considered that valuation, it could never have fixed the present value at $20,000, which is nearly three and a half times its former value, because he himself said "there is not an active market for farm land in this location." And as to the site value he said "it is to be seriously doubted

that such a market value will ever exist and it must be regarded as merely speculative, as matters stand." Memorandum opinion, R. 30 to 31.

By the terms of Section 75 (s) (3) the court shall:

"After such hearing, fix the value of the property, **in accordance with the evidence submitted.**" The value by the same Section 75 (s) (3) is the "then fair and reasonable market value."

In exercising its statutory function of fixing the valuation for redemption in "accordance with the evidence submitted" the court sits as a jury, and is bound by the laws of evidence as is any jury. Let this instance be examined accordingly as if the evidence here submitted had been submitted to a jury, together with interrogatories to be returned with the verdict. If the general verdict is inconsistent with the special findings returned by the answer to the interrogatories, the verdict must be set aside and resubmitted to another jury.

Let it be supposed that a court charges the jury that it is to fix the "then fair and reasonable market value in accordance with the evidence submitted."

Verdict: "$20,000." (Opinion, R. 29, last paragraph of opinion at R. 31).

Question 1: "Has there been any substantial increase in value in the last two or three years?"

Answer: "There is not an active market for farm land

in this location, although it has improved somewhat in the last two or three years." Note: The dictionary defines somewhat as meaning little. (Opinion, R. 29, middle of paragraph at bottom of page 30).

Question 2: "Has the farm any site value?"

Answer: "It is to be seriously doubted that such a value will exist and it must be regarded as merely speculative." (Opinion, R. 29, bottom of page 30, top of page 31.)

Question 3: "In fixing the value did you consider the former $5,800 valuation?"

Answer: "No. It was made for taxation purposes." (Opinion, R. 29, end of first paragraph).

Can it be doubted that a motion for a new trial must be granted? Can it be doubted that if a new trial were denied the order denying it would be reversed? A new trial would have to be granted because the undisputed evidence is that $5,800 was the valuation when conditions were substantially the same.

The error is plain and a court of equity is obliged by its very nature and by the purpose of the statute it admin-

isters to consider the discarded evidence and fix a value in accordance with the evidence submitted.

"It is judicial process itself that is on trial," because the same court in the same proceeding fixed the value of the same farm at $5,800 and the same court itself found there has been no substantial increase in value since the $5,800 valuation was fixed and that there was no site value. But the court forgot its former action and thought the $5,800 concerned a different subject and was not its own act and disregarded it altogether. Due process of law does not so comport itself.

3.

The proceeding in the district court below cut right across the course of the uniform course of the decisions of the court, that in administering Section 75 the orderly procedure of the statute is a mandate to be followed.

No rule has ever been more clearly established by this Court, nor more firmly and consistently adhered to, than that

> The letter and spirit of Section 75, the farmer debtor law, must be honestly adhered to in order to carry out its purpose to permit the farmer debtor to redeem his property at a valuation set by the court in accordance with the evidence. The orderly procedure named in the statute is a mandate to be followed. No specious or narrow formalistic interpretation in disregard of the spirit and letter of the law will be permitted.

Every deviation from these principles so far adjudicated by the court was held to be unlawful and was corrected.

These principles have been enunciated and repeated over and over again in the following cases:

Wright v. *Vinton*, 300 U. S. 440;
First National Bank v. *Beach*, 301 U. S. 435;
Adair v. *Bank*, 303 U. S. 350;
Wright v. *Union Central*, 304 U. S. 502;
John Hancock v. *Bartels*, 308 U. S. 180;
Gray v. *Union*, 308 U. S. 523;
Morrison v. *Federal*, 308 U. S. 524;
Kalb v. *Feuerstein*, 308 U. S. 433;
Borchard v. *California*, 310 U. S. 311;
Wright v. *Union Central*, 311 U. S. 273;
Wright v. *Logan*, 315 U. S. 139;
Mangus v. *Miller*, 317 U. S. 178;
Wragg v. *Federal*, 317 U. S. 325.

The devices employed to defeat the spirit and purpose of Section 75 have been applied to every substantial provision of the act from the right to file a petition to the right to redeem the property at its fair and reasonable value. The right to redeem is equally as important as the right to file a petition to involve the operation of the statute. For the invocation of the statute is not merely to see the wheels go round, but for the very practical purpose of redeeming the farmer debtor's farm at its real value. A court equally deviates from the orderly mandate of the statute whether it denies the right to file, or dismisses a petition already filed, or disclaims farm and authorizes foreclosure, or merely disregards the provisions of Section 75 (s) (3) that

> "The court shall . . . fix the value of the property in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court . . . and thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of all encumbrances to the debtor."

Conclusion.

The refusal of the right to file a motion in the proceeding was an arbitrary denial of a fundamental right and should be corrected.

The chief end purpose of the farmer debtor law, namely, to give the farmer-debtor a genuine opportunity to redeem his farm at its real value, has been thwarted by a disregard of the provision of the statute that all the evidence, not merely a part of it, must be considered in fixing that value for redemption.

The principles announced in the adjudication of the statutes involved here, which have been declared and often repeated in many opinions of this Court are violated by the procedure followed in this case.

Wherefore your petitioner prays that a writ of certiorari may issue.

Respectfully submitted,

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February 24, 1945.